

1-1 By: Nelson S.B. No. 427
1-2 (In the Senate - Filed February 7, 2013; February 13, 2013,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; February 26, 2013, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; February 26, 2013, sent to printer.)

1-6 COMMITTEE VOTE

1-7	Yea	Nay	Absent	PNV
1-8	Nelson	X		
1-9	Deuell	X		
1-10	Huffman	X		
1-11	Nichols	X		
1-12	Schwertner	X		
1-13	Taylor	X		
1-14	Uresti	X		
1-15	West	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the regulation of certain child-care facilities and
1-20 administrators of those facilities.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 42.044, Human Resources Code, is amended
1-23 by amending Subsections (b) and (b-2) and adding Subsection (b-3)
1-24 to read as follows:

1-25 (b) Except as provided by Subsection (b-3), the [The]
1-26 department shall inspect all licensed or certified facilities at
1-27 least once a year and may inspect other facilities or registered
1-28 family homes as necessary. At least one of the annual visits must
1-29 be unannounced and all may be unannounced.

1-30 (b-2) Except as otherwise provided by this subsection,
1-31 during an unannounced annual or biennial inspection of a day-care
1-32 center, the department shall meet with the director designated by
1-33 the day-care center as having daily, on-site responsibility for the
1-34 operation of the day-care center to assess whether the director
1-35 meets the qualifications of a director specified by this chapter
1-36 and department rules. If the director is not present during the
1-37 unannounced annual or biennial inspection, the department shall
1-38 schedule a subsequent meeting with the director for that purpose
1-39 and shall conduct that meeting at the day-care center.

1-40 (b-3) The department may, in accordance with rules adopted
1-41 by the executive commissioner, designate a licensed day-care center
1-42 or group day-care home for a biennial inspection if the department
1-43 determines, based on previous inspections, that the facility has a
1-44 history of substantial compliance with minimum licensing
1-45 standards. The biennial inspection of a day-care center or group
1-46 day-care home must be unannounced.

1-47 SECTION 2. Subsections (a-2), (a-4), (a-5), and (b-1),
1-48 Section 42.056, Human Resources Code, are amended to read as
1-49 follows:

1-50 (a-2) In accordance with rules adopted by the executive
1-51 commissioner, the director, owner, or operator of a residential
1-52 child-care facility, day-care center, before-school or
1-53 after-school program, or school-age program shall submit a complete
1-54 set of fingerprints of each person whose name is required to be
1-55 submitted by the director, owner, or operator under Subsection (a),
1-56 unless the person is only required to have the person's name
1-57 submitted based on criteria specified by Subsection (a)(7). This
1-58 subsection does not apply to a program that is exempt from the
1-59 licensing requirements of Section 42.041.

1-60 (a-4) In accordance with rules adopted by the executive
1-61 commissioner, the director, owner, or operator of a [child-care]

facility or family home shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) if:

(1) the person resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a); or

(2) the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

(a-5) The rules adopted by the executive commissioner under Subsections (a-2) [~~(a-3)~~] and (a-4):

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the department to waive the submission of fingerprints required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history record check on file with the department; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the department through the Department of Public Safety; and

(B) the date on which the current submission of fingerprints is required occurs before the second anniversary of a previous name-based criminal history check of the person.

(b-1) In addition to any other background or criminal history check conducted under Subsection (b), for each person whose fingerprints are submitted under Subsection (a-2) [~~(a-3)~~] or (a-4), the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

SECTION 3. Section 42.078, Human Resources Code, is amended by amending Subsections (a) and (a-1) and adding Subsection (a-2) to read as follows:

(a) The department may impose an administrative sanction or an administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the department may impose an administrative penalty against a [~~residential child-care~~] facility or family home or a controlling person of a [~~residential child-care~~] facility or family home if the facility, family home, or controlling person:

(1) violates a term of a license or registration issued under this chapter;

(2) makes a statement about a material fact that the facility or person knows or should know is false:

(A) on an application for the issuance of a license or registration or an attachment to the application; or

(B) in response to a matter under investigation;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by the facility; or

(B) any part of the premises of the facility;

(4) purposefully interferes with the work of a representative of the department or the enforcement of this chapter; or

(5) fails to pay a penalty assessed under this chapter on or before the date the penalty is due, as determined under this section.

(a-1) Except as provided by Subsection (a-2), nonmonetary [Nonmonetary,] administrative sanctions [penalties or remedies], including [but not limited to] corrective action plans, probation, and evaluation periods, shall be imposed when appropriate before administrative [monetary] penalties.

(a-2) The department may impose an administrative penalty without first imposing a nonmonetary administrative sanction for the following violations:

(1) failing to timely submit the information required to conduct a background and criminal history check under Section 42.056 and applicable department rules on two or more occasions;

(2) failing to submit the information required to conduct a background and criminal history check under Section 42.056 and applicable department rules before the 30th day after the date the facility or family home is notified by the department that the information is overdue;

(3) except as provided by Section 42.056(g), knowingly allowing a person to be present in a facility or family home when the person's background and criminal history check has not been received;

(4) knowingly allowing a person to be present in a facility or family home when the person's background and criminal history check has been received and contains criminal history or central registry findings that under department rules preclude the person from being present in the facility or family home; or

(5) violating a condition or restriction the department places on a person's presence at a facility or family home as part of a pending or approved risk evaluation of the person's background and criminal history or central registry findings.

SECTION 4. Section 43.001, Human Resources Code, is amended by adding Subdivisions (5), (6), and (7) to read as follows:

(5) "Controlling person" has the meaning assigned by Section 42.002.

(6) "General residential operation" has the meaning assigned by Section 42.002.

(7) "Permit" means a license, listing, registration, or certification issued to a facility or family home under Chapter 42.

SECTION 5. Subsection (a), Section 43.003, Human Resources Code, is amended to read as follows:

(a) Except as provided by Subsection (b) of this section, a person may not serve as a child-care administrator of a general residential operation [child-care institution] without a license issued by the department under this chapter.

SECTION 6. Section 43.004, Human Resources Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) To be eligible for a child-care administrator's license a person must:

(1) provide information for the department's use in conducting a criminal history and background check under Subsection (c), including a complete set of the person's fingerprints;

(2) satisfy the minimum requirements under department rules relating to criminal history and background checks;

(3) pass an examination developed and administered by the department that demonstrates competence in the field of child-care administration;

(4) [+3+] have one year of full-time experience in management or supervision of child-care personnel and programs; and

(5) [+4+] have one of the following educational and experience qualifications:

(A) a master's or doctoral degree in social work or other area of study; or

(B) a bachelor's degree and two years' full-time experience in child care or a closely related field.

(b) To be eligible for a child-placing agency administrator's license a person must:

(1) provide information for the department's use in conducting a criminal history and background check under Subsection (c), including a complete set of the person's fingerprints;

(2) satisfy the minimum requirements under department rules relating to criminal history and background checks;

(3) pass an examination developed and administered by the department that demonstrates competence in the field of placing children in residential settings or adoptive homes;

(4) ~~[(3)]~~ have one year of full-time experience in management or supervision of child-placing personnel and programs; and

(5) ~~[(4)]~~ have one of the following educational and experience qualifications:

(A) a master's or doctoral degree in social work or other area of study; or

(B) a bachelor's degree and two years' full-time experience in the field of placing children in residential settings or adoptive homes or a closely related field.

(d) The executive commissioner shall adopt rules consistent with Section 42.056 relating to requiring a criminal history and background check before issuing or renewing a license under this chapter.

SECTION 7. Subsection (a), Section 43.009, Human Resources Code, is amended to read as follows:

(a) To be eligible for license renewal, a license holder shall:

(1) present evidence to the department of participation in a program of continuing education for 15 hours of formal study each year during the two-year period before the renewal; and

(2) provide information for the department's use in conducting a criminal history and background check under Section 43.004(c) and applicable department rules, including a complete set of the person's fingerprints.

SECTION 8. Subsection (a), Section 43.010, Human Resources Code, is amended to read as follows:

(a) The department may deny, revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for:

(1) violating this chapter or a rule adopted under this chapter;

(2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted under this chapter;

(3) engaging in fraud or deceit related to the requirements of this chapter or a rule adopted under this chapter;

(4) providing false or misleading information to the department during the license application or renewal process for any person's license;

(5) making a statement about a material fact during the license application or renewal process that the person knows or should know is false;

(6) having:

(A) a criminal history or central registry record that would prohibit a person from working in a child-care facility, as defined by Section 42.002, under rules applicable to that type of facility; or

(B) a criminal history relevant to the duties of a licensed child-care or child-placing administrator, as those duties are specified in rules adopted by the executive commissioner;

(7) using drugs or alcohol in a manner that jeopardizes the person's ability to function as an administrator; ~~[or]~~

(8) performing duties as a child-care administrator in a negligent manner; or

(9) engaging in conduct that makes the license holder ineligible for:

5-1 (A) a permit under Section 42.072; or
5-2 (B) employment as a controlling person or service
5-3 in that capacity in a facility or family home under Section 42.062.

5-4 SECTION 9. Subsection (a-3), Section 42.056 and Subdivision
5-5 (1), Section 43.001, Human Resources Code, are repealed.

5-6 SECTION 10. The changes in law made by this Act to Section
5-7 42.078, Human Resources Code, apply only to a violation committed
5-8 on or after the effective date of this Act. A violation committed
5-9 before the effective date of this Act is governed by the law in
5-10 effect when the violation was committed, and the former law is
5-11 continued in effect for that purpose.

5-12 SECTION 11. This Act takes effect September 1, 2013.

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